

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Hardrick L. Tucker	:	
	:	CIVIL ACTION
	:	
v.	:	93-6683
	:	
Ogden Corp. and	:	
Prudential Ins.	:	
Co. of America	:	

M E M O R A N D U M

Broderick, J.

April 24, 1998

Presently before the Court is a motion for summary judgment filed by Defendant Ogden Corporation and Defendant Prudential Insurance Company of America (hereinafter collectively "Defendants"). For the reasons which follow, the Court will grant Defendants' motion.

Before turning to the merits of Defendants' motion, the Court feels compelled to note the somewhat convoluted history which has preceded it. Mr. Tucker first initiated the instant action in this Court in 1993, pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461. Tucker, a former employee at Defendant Ogden Corporation who underwent quadruple bypass surgery in 1991, sought to recover Long Term Disability ("LTD") benefits under the Prudential LTD benefits policy OF Ogden's employee benefit plan. Prudential had denied Mr. Tucker LTD benefits on the ground that he had not provided sufficient medical evidence that he was "totally disabled," as defined by the Prudential LTD policy. In his 1993 complaint, Mr.

Tucker alleged that Defendant's decision to deny him LTD benefits was arbitrary and capricious. Tucker further alleged that Defendants had failed to provide him with a full and fair review of his claim.

In 1995, this Court held a non-jury trial as to Tucker's claims. On December 28, 1995, the Court issued a Memorandum and Order finding that Prudential's decision to deny Mr. Tucker LTD benefits was arbitrary and capricious, and remanding the case to Prudential "for the purpose of determining whether Plaintiff Hardrick L. Tucker was entitled to long-term disability benefits." Defendants appealed this Court's December 28, 1995 Memorandum and Order to the Third Circuit.

In November, 1996, the Third Circuit affirmed this Court's Order to remand Mr. Tucker's claim. In its Memorandum Opinion, the Third Circuit stated that, pursuant to the District Court's Order to remand, "Prudential will be required to consider de novo whether Tucker has carried his burden of showing that he is entitled to long term disability benefits under the terms of the policy." As the Third Circuit noted, Prudential had considered the reports submitted by Drs. Thomas Kreulen and Thomas Santilli, but had failed to consider the reports submitted by Mr. Tucker's current treating physician, Dr. Frederick Burton. Accordingly, the Third Circuit ordered that Prudential consider Mr. Tucker's claim for benefits de novo, and, in doing so, "consider the report of Dr. Burton, as well as the reports of Drs. Kreulen and Santilli." The Third Circuit emphasized that Prudential's de

novo review of Mr. Tucker's claim should focus on whether, in light of the evidence submitted by Drs. Burton, Kreulen and Santilli, Mr. Tucker had carried his burden of showing that he is entitled to LTD benefits under the terms of Prudential's LTD policy.

Following this Court's Order to remand, and the Third Circuit's affirmance thereof, Prudential again considered Mr. Tucker's case and again denied his claim for LTD benefits. Mr. Tucker then filed the instant complaint on April 2, 1997. In the instant complaint, Tucker seeks a declaratory judgment from this Court as to the parties' rights and obligations, alleging that Defendants' decision to again deny him LTD benefits was arbitrary and capricious. Mr. Tucker further alleges that Defendants have breached their fiduciary duty to him by requiring him to produce "objective medical evidence" to support his claim of disability. Moreover, Mr. Tucker alleges that Defendants have deprived him of a full and fair review of his claim for LTD benefits, in violation of ERISA § 503, 29 U.S.C. §1133, in that Prudential's decision letter did not cite to particular provisions of the LTD policy which support its decision to deny Mr. Tucker benefits, and did not describe what additional material would be necessary for Mr. Tucker to perfect his claim for benefits.

Defendants subsequently filed this motion for summary judgment.

The facts as to which there are no disputed issues, as

disclosed by the affidavits and exhibits submitted in connection with Defendants' motion for summary judgment, are summarized as follows:

On March 31, 1991, Hardrick Tucker suffered a serious heart attack. At the time of his heart attack, Mr. Tucker was employed at Ogden Service Corporation, and was a participant in Ogden's employee benefit plan, which plan included the LTD benefits policy at issue. Although Defendant Ogden is the employee benefit plan administrator, Prudential is the claims administrator for the LTD policy, and makes decisions regarding eligibility for LTD benefits.

Mr. Tucker had been employed in various positions at Ogden Services since January, 1968. He had begun his work with Ogden in Philadelphia, but, since 1985, had been commuting daily from his home in Philadelphia to Ogden's offices in New York City. At the time of his heart attack in 1991, Mr. Tucker was working at Ogden as a data control manager.

Mr. Tucker underwent quadruple bypass surgery on April 12, 1991. He remained at home following his surgery until September 30, 1991. During this time, Tucker received his full salary pursuant to Ogden's short term disability plan. On October 1, 1991, Mr. Tucker attempted to return to work, and commuted to Ogden's offices in New York City three days a week. On November 1, 1991, however, Tucker took a leave of absence. At that time, he applied for LTD benefits.

The Prudential LTD policy at issue provides that a plan participant may be entitled to LTD benefits after he is "totally disabled" for a period of twenty-six consecutive weeks. The LTD policy defines a person as "totally disabled" for the purposes of receiving LTD benefits only if the person satisfies two requirements:

(1) Due to sickness or accidental bodily injury, he (a) is completely unable to perform any and every duty pertaining to his occupation with the Employer and (b) after the Initial Duration [of 24 months]... of a period of disability, is completely unable to engage in any and every gainful occupation for which he is reasonably fitted by education, training, or experience.

(2) He is not engaged in any gainful occupation and is not confined in a penal institution or other house of correction as a result of conviction for a criminal or other public offense.

The definition in Ogden's Salaried Employees Handbook of "totally disabled" varies slightly from the definition in the LTD policy. According to the Employee's Handbook, an employee is "totally disabled" and eligible to receive LTD benefits as follows:

During the first 24 months you receive LTD benefits, you must be unable to perform each duty of your regular job at the company.

After that, you must be completely unable to perform any work for which you are reasonably qualified by education, training or experience.

In either case, you do not need to be confined at home, but you must be under the regular care of a licensed physician. The company may require you to have a medical exam from time to time as proof of continuing disability. You won't be considered totally disabled if you are gainfully employed.

The Employee's Handbook further provides: "This booklet summarizes the legal documents for the benefit plans described. If there is any difference between this description and the documents, the legal documents will govern."

The Prudential LTD policy provides that "[w]ritten proof of the loss under a coverage upon which claim may be based must be furnished to Prudential..." The policy further provides that "[a]ll benefits will be paid upon written proof covering the occurrence, character and extent of the event for which the claim is made."

On his LTD claim form, which form was submitted to Prudential in November, 1991, Tucker stated that he had been unable to work since November 1, 1991. Mr. Tucker further stated that he did not expect to return to another occupation. In answering the form's question "[h]ow do your limitations and symptoms prevent you from performing your usual job duties?" Mr. Tucker responded "[t]he commute to New York." Mr. Tucker listed Dr. Thomas Kreulen as his current treating physician.

On November 14, 1991, Dr. Kreulen submitted a form which had been sent to him by Prudential. On this form, Dr. Kreulen stated that he had diagnosed Mr. Tucker with "coronary artery disease." According to Dr. Kreulen's statements on the form, Mr. Tucker had subjective symptoms of "chest pain." He had been confined to a hospital from April 1, 1991 through April 20, 1991, and again from September 8, 1991 until September 10, 1991. Dr. Kreulen

noted that Mr. Tucker had "improved" since his heart attack, and had only a "slight limitation" due to his heart condition. Yet, in answer to the question "[i]s Patient now totally disabled," Dr. Kreulen checked "Yes," and wrote next to the box, "for his job." Dr. Kreulen stated that Mr. Tucker was not "totally disabled" for all other work. Dr. Kreulen further stated that he did not expect a fundamental or marked change in Mr. Tucker's condition in connection with his current job or for any other work. Dr. Kreulen answered, "Yes" when asked if a job modification would enable Tucker to work with his impairment.

On December 2, 1991, Prudential sent Dr. Kreulen an additional form which included several questions. On this form, Dr. Kreulen stated that Mr. Tucker's present complaints included chest pain and fatigue. When asked how long Tucker had been "totally disabled solely by this sickness so that he was prevented from working," Dr. Kreulen stated, "[f]rom March, 1991 to and including the present." Yet, when asked if Tucker had recovered sufficiently to return to work, Dr. Kreulen answered, "Yes." Dr. Kreulen stated that Mr. Tucker had been able to return to work since "August '91, approximately." When asked if Mr. Tucker's commute from Pennsylvania to New York effected or contributed to his inability to work, Dr. Kreulen answered, "Yes."

On January 15, 1992, Dr. Thomas M. Santilli, M.D., an independent medical examiner, submitted a report and assessment in connection with Mr. Tucker's claim for LTD benefits. In his

report, Dr. Santilli stated that Mr. Tucker "underwent a complete cardiovascular evaluation" on December 31, 1991. In his report, Dr. Santilli stated that an exercise test suggested a "moderate degree of limitations" in Mr. Tucker's activities. Dr. Santilli stated, however, that "Mr. Tucker could perform routine activities of daily living which would include home office work or general office type activities in the Phila. area." However, Dr. Santilli opined that Tucker could not "regularly commute to New York on a daily basis due to the excessive level of activity and stress with this significant traveling distance."

On March 25, 1992, Dr. Frederick D. Burton, a doctor of internal medicine, completed a form in connection with Mr. Tucker's application for social security disability benefits. In this March 25, 1992 form, Dr. Burton stated that he had examined Mr. Tucker on that day, and diagnosed him with "S/P MI" (status-post myocardial infarct) and hypertension. Dr. Burton stated that Mr. Tucker was "Incapacitated" which term was defined as having a "[p]rofoundly limiting physical or mental condition which permanently precludes any form of employment." Dr. Burton noted that Mr. Tucker's "[h]eart attack has left [Mr. Tucker] a cardiac invalid."

In a letter dated September 19, 1994, addressed to Mr. Tucker's attorney, Dr. Burton stated that he had been treating Mr. Tucker on a regular basis since March, 1992. According to Dr. Burton's letter, Mr. Tucker was being treated for "status-post myocardial infarct with subsequent quadruple coronary

arterial bypass graft," which had left Mr. Tucker a "cardiac cripple." Mr. Tucker was also being treated for hypertension, arthritis and occasional bouts of gastroenteritis. In his letter, Dr. Burton stated that Mr. Tucker was experiencing constant, persistent pain as a result of his arthritis, and that this "coupled with his ongoing cardiovascular situation" made Mr. Tucker's ability to perform in most work situations "difficult if not impossible."

Dr. Burton submitted a subsequent letter to Mr. Tucker's counsel, dated April 24, 1996. In this subsequent letter, Dr. Burton stated that Mr. Tucker's condition was the same as it had been in September, 1994. According to Dr. Burton, Mr. Tucker's condition would not significantly improve in the future. Dr. Burton stated that Mr. Tucker was "unable to perform any work related activities."

Following this Court's Order to remand Mr. Tucker's claim, and the Third Circuit's affirmance of that Order, Prudential again considered Mr. Tucker's claim for LTD benefits. On January 21, 1997, Prudential issued a letter to Mr. Tucker's attorney which stated its decision to again deny Mr. Tucker's claim for LTD benefits. The letter stated that Prudential had reviewed the written information submitted by Dr. Kreulen, along with information gathered in a telephone conversation with Dr. Kreulen on December 11, 1991, and had reviewed the results of Mr. Tucker's consultation with Dr. Santilli, as well as the September

19, 1994 letter submitted by Dr. Burton. Prudential addressed each of these reports in turn.

In its decision letter, Prudential pointed to Dr. Kreulen's November 1991 report which stated that Mr. Tucker had been released to return to work in August 1991. Additionally, Prudential pointed to Dr. Kreulen's report in November 1991 that Mr. Tucker had made progress and was walking up to two miles per day. Prudential further noted in its letter that Dr. Santilli had stated in his report that Mr. Tucker could perform routine activities such as home office work or general office type activities, but could not undertake the daily commute from Philadelphia to New York. Prudential stated that it "would not take into account Mr. Tucker's commute when determining if he is capable of performing each duty of the regular job at the company." Finally, Prudential addressed the September, 1994 letter submitted by Dr. Burton. According to Prudential, Dr. Burton's opinion as to Mr. Tucker's condition was "not directly related to the 26 week period that Mr. Tucker must be totally disabled before being entitled to receive LTD benefits under the Ogden Services Group Policy." Moreover, Prudential noted, Dr. Burton had submitted no objective test results to support his opinion regarding Mr. Tucker's condition.

Prudential stated that, after reviewing this information, it had found "no conclusive objective medical evidence to support a significant cardiac condition that would prevent Mr. Tucker from performing each duty of his regular job at the company."

Prudential concluded the letter by stating:

You have a right to appeal our decision. If you elect to do so, the appeal must be made in writing by you or your authorized representative. The appeal may identify the issues and provide other comments or additional evidence you wish considered, as well as any pertinent documents you may wish to examine.

Prudential then provided a name and address where such an appeal should be submitted.

Mr. Tucker did not file an administrative appeal. Instead, on April 2, 1997, Mr. Tucker filed the instant complaint. On May 19, 1997, after Tucker had filed the instant complaint, Prudential sent Mr. Tucker's attorney a follow up letter, stating that "Prudential Disability Management Services has been advised through counsel that your client has raised several issues" concerning Prudential's January 21, 1997 decision letter. In this follow up letter, Prudential further explained its reasons for denying Mr. Tucker's claim for LTD benefits. Prudential explained that, because Mr. Tucker's claim application had listed April 1, 1991 as the date of Mr. Tucker's disability, Prudential had considered whether Tucker satisfied the definition of "totally disabled" during the twenty-six week period between April 1, 1991 and September 30, 1991. Prudential again emphasized Dr. Kreulen's statement that Tucker had been released to return to work in August 1991, and noted Dr. Santilli's conclusion that Mr. Tucker could perform routine office activities but could not undertake the daily commute from Philadelphia to New York. Prudential also addressed at some

length the reports submitted by Dr. Burton. Prudential noted that Dr. Burton's opinions did not pertain to Mr. Tucker's functional capacities during the period between April 1991 and September 1991. Moreover, Prudential noted that Dr. Burton identified some physical limitation which were not concerns for Mr. Tucker when he was originally released to work. Finally, Prudential stated that it had chosen to place more reliance on the information provided by Dr. Kreulen and Dr. Santilli, because these doctors were cardiologists while Dr. Burton was an internist. As in its January 1997 decision letter, Prudential concluded its letter by explaining that Mr. Tucker had a right to appeal. Prudential also provided information as to where Tucker should submit such an appeal. As of this date, Mr. Tucker has not filed an administrative appeal of Prudential's decision.

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The law is clear that when a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is properly made, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986);

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, as stated in Fed.R.Civ.P. 56(e), "must set forth specific facts showing that there is a genuine issue for trial."

When an employee benefits plan gives the administrator discretion to make eligibility determinations under the plan, the district court reviews that determination under an "arbitrary and capricious" standard. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); Abnathya v. Hoffman-LaRoche, 2 F.3d 40, 41 (3d Cir. 1993). As the Third Circuit has noted, the "arbitrary and capricious" standard is essentially the same as the "abuse of discretion" standard. Abnathya, 2 F.3d at 45. Under the arbitrary and capricious standard, "the district court may overturn a decision of the Plan administrator only if it is without reason, unsupported by substantial evidence or erroneous as a matter of law." Id.(citations omitted). The district court must defer to the plan administrator "unless the administrator's decision is clearly not supported by the evidence in the record or the administrator has failed to comply with the procedures required by the plan." Id. at 41. "This scope of review is narrow, and the court is not free to substitute its own judgment for that of the defendants in determining eligibility for plan benefits." Id. at 45.

The Court has reviewed Prudential's decision to deny Mr. Tucker's LTD benefits under an arbitrary and capricious standard. The Ogden Employees Benefit Handbook provides that "[t]he insurance company makes all payments from the plan and approves decisions on all claims." This statement provides Prudential as the claims administrator with discretionary authority to determine a participant's eligibility to receive LTD benefits.

Applying the arbitrary and capricious standard to the facts of the instant case, the Court must affirm Prudential's decision to deny Mr. Tucker LTD benefits. As the Third Circuit made clear in its Memorandum Opinion affirming this Court's order to remand, Mr. Tucker bears the "burden of providing medical evidence showing that he was disabled within the meaning of the [Prudential LTD] policy." As defined in both the LTD policy and the Ogden employees handbook, an employee is "totally disabled" if he is unable to perform each duty of his regular job. In the instant case, Prudential determined on remand that Mr. Tucker had failed to satisfy this burden. Prudential's determination is supported by substantial evidence in the record. As evidenced in its January 1997 and May 1997 decision letters, Prudential considered the reports of Dr. Kreulen, Dr. Santilli and Dr. Burton, and provided coherent reasons why these reports did not satisfy Mr. Tucker's burden of coming forward with objective evidence showing that he was unable to perform each duty of his job at Ogden.

Accordingly, the Court will affirm Prudential's decision on

remand to deny Mr. Tucker LTD benefits. There is substantial evidence in the record to support Prudential's determination that Mr. Tucker had failed to satisfy his burden of providing objective medical evidence to show that he was unable to perform each duty of his job.

Additionally, the Court will grant summary judgment in favor of Defendants as to Mr. Tucker's claim that Prudential violated ERISA § 503, 29 U.S.C. § 1133, by failing to provide him with a full and fair review of his claim for LTD benefits. The notices of denial issued by Prudential in January 1997 and May 1997 substantially complied with ERISA § 503. In both the January 1997 decision letter and the May 1997 decision letter, Prudential stated which materials it had considered in arriving at its decision to deny Mr. Tucker's claim for benefits, and provided specific reasons why it had reached its decision. In both letters, Prudential referred to the definition of "totally disabled" provided in the LTD policy. Moreover, in both letters, Prudential informed Mr. Tucker of his right to appeal its decision to deny him benefits, and told him how to file such an appeal. Accordingly, there is no evidence that Defendants failed to substantially comply with ERISA § 503, 29 U.S.C. § 1133, in a way which prejudiced Mr. Tucker.

The Court will also grant summary judgment in favor of Defendants with respect to Mr. Tucker's claims of breach of fiduciary duty. Mr. Tucker claims that Defendants have breached their fiduciary duty to him by requiring him to produce

"objective medical evidence" to support his disability claim, and by ignoring this Court's factual findings regarding Mr. Tucker's job duties at Ogden, which findings were made in connection with the Court's 1995 Order to remand Mr. Tucker's claim to Prudential. As stated above, however, the LTD policy states that "benefits will be paid upon written proof covering the occurrence, character and extent of the event for which the claim is made." Moreover, the Third Circuit stated that, in denying Mr. Tucker's claim, Prudential had correctly perceived the issue before it as "whether Tucker had carried his burden of providing medical evidence showing that he was disabled within the meaning of the policy." Prudential's requirement that Mr. Tucker produce objective medical evidence is therefore consistent with the Third Circuit's Memorandum, as well as the language of the LTD policy.

Accordingly, for the reasons stated above, the Court will grant Defendants' motion for summary judgment and enter judgment in favor of Defendants and against Plaintiff Hardrick Tucker. Prudential's decision to deny Mr. Tucker LTD benefits was not arbitrary and capricious. Moreover, Mr. Tucker has failed to produce any evidence that Defendants failed to provide him with a full and fair review of his claim on remand, in violation of ERISA § 503, 29 U.S.C. § 1133, or that Defendants violated their fiduciary duty.

An appropriate Order follows.